

Approved For Release 2001/08/25 : CIA-RDP76M00527R000700130008-2

MEMORANDUM FOR: PLC

Meeting on H. R. 12206

Monday, 22 April

2:00 p.m. (room is available until 4:00)

5D03 (x6468)STATINTL



called - OK

cg
4/19

(DATE)

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

H. R. 12206

FROM:

OLC

7D35

EXTENSION

NO.

6136

DATE

19 April 1974

TO: (Officer designation, room number, and building)

STATINTL

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Attached for your information is a first draft reply. Would appreciate your comments as soon as possible. We will meet to finalize a draft at 2:00 p.m. on Monday, 22 April, in Room 5D03.

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STATINTL

PLC

DRAFT:PLC:cg (19 Apr 74)

Honorable William S. Moorhead, Chairman
Foreign Operations and Government Information Subcommittee
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in reply to your letter dated April 11, 1974, requesting a statement for the record on H. R. 12206, "To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies," and on related bills H. R. 13303 and H. R. 13872. In making our comments, in the absence of any indications to the contrary, we presume that the rights under H. R. 12206 and the related bills inure to all persons regardless of U. S. citizenship or domicile.

H. R. 12206

Section 552a. (a)(1) would preclude an agency from providing any information concerning an individual to any other agency unless the individual is notified. Section (a)(3) would require an agency to maintain a record of the names and addresses of all persons to whom such information was provided. Sections (a)(4) and (5) permit any person to inspect his own record; to have copies made thereof; and to supplement and correct the record. Under Section (a)(6), an agency must "remove erroneous information of any kind" and must notify all agencies to whom

the information was disseminated.

Section 552 a. (b)(1) exempts from the provisions of the proposed amendments records that are specifically required by Executive Order to be kept secret in the interest of the national defense and foreign policy. Section 552a. (c) requires the President to report annually to Congress the number of records which are exempted under Section (b)(1).

H. R. 13303

The above comments on H. R. 12206 apply equally to H. R. 13303.

H. R. 13872

H. R. 13872 establishes basically similar procedures as H. R. 12206 and H. R. 13303. It additionally establishes a Federal Privacy Board to oversee the implementation of the new procedures to be established.

Section 552a. (d) of H. R. 13872 would exempt certain records from the requirements in subparagraphs (1), (4), and (7) of paragraph (b) of the bill. The exemption applies to records which under Executive Order are to be kept secret in the interest of national defense or foreign policy and disclosure of which would endanger military plans, reveal military weaponry, or "endanger the life of any person engaged in foreign intelligence gathering operations of the United States Government."

Comments

It is clear that H. R. 12206 and H. R. 13303, by providing an exemption to include information which under Executive Order is to be kept secret, intend to exclude all sensitive information. Upon careful analysis, however, the exemption provided in these bills *appear to* does not cover all Agency holdings which require protection.

Record information on individuals of foreign intelligence interest if drawn from clandestine and covert sources warrants protection under Executive Order 11652, "Classification and Declassification of National Security Information and Material," and would be exempt under the provisions of H. R. 12206 and H. R. 13303. In many instances, however, data is drawn from overt sources, including openly available publications, and does not come under the protection of the Executive Order. Though such information is unclassified, the fact of a U. S. intelligence interest in ^asubject person is sensitive. The Director of Central Intelligence does protect such information under section 102(d)(3) of the National Security Act of 1947, as amended, which makes him responsible for protecting intelligence sources and methods from unauthorized disclosure. It is this statutory responsibility, rather than Executive Order, upon which the Director's authority would rest.

Since we consider the exemptions in H. R. 12206 and H. R. 13303 inadequate to protect all Agency holdings, we would request amending

exemption (b)(1) in both bills as follows (added language underlined):

"(b) This section shall not apply to records that are -

"(1) specifically protected by statute or required by Executive Order to be kept secret in the interest of the national defense and foreign policy; or ... "

H. R. 13872 presents a much more serious problem. Under H. R. 13872, intelligence is excluded from certain requirements of the bill, but only if disclosure would endanger the life of anyone engaged in intelligence collection. Under this definition, ~~the absence of~~ any lesser measure of reprisal, whether incarceration or banishment, would require an agency to meet the requirements in the bill. Clearly, practically all Agency holdings, including classified information, would be affected. If H. R. 13872 is given favorable consideration, we request that the exemption in the bill be reworded to read as stated in H. R. 12206 and H. R. 13303 with the added amended language as above requested.

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If the holdings of this Agency are recognizably exempt from the provisions of H. R. 12206 and the related bills, it would serve no purpose to report annually to the Congress the number of records exempted during the previous year. We would urge that the Committee include

legislative history to make it clear that CIA and other intelligence agencies similarly exempt need not meet this reporting requirement.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director